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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/612,094	07/01/2003	Isaac Weiser	03-11987	5817
25189	7590	06/02/2006	EXAMINER	
CISLO & THOMAS, LLP 233 WILSHIRE BLVD SUITE 900 SANTA MONICA, CA 90401-1211			GARCIA, ERNESTO	
			ART UNIT	PAPER NUMBER
			3679	

DATE MAILED: 06/02/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/612,094	WEISER ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Ernesto Garcia	3679	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 09 March 2006.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-7 and 9-16 is/are pending in the application.
- 4a) Of the above claim(s) 1-3 and 12-16 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 4-7 and 9-11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

#### ***Restriction***

Claims 1-3 and 12-16 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicants timely traversed the restriction (election) requirement in the reply filed on November 1, 2004.

DP In respect to the additional restriction between the novelty system and the method of constructing the novelty mailed on 1/23/2006, the restriction ~~has restriction~~ has been withdrawn because the method has been amended to a kit for making the novelty assembly as claimed. Accordingly, system and the kit in the amendment received on 3/09/06 have been examined.

#### ***Claim Objections***

Claims 4 and 10 are objected to because of the following informalities:

regarding claim 4, the first occurrence of "said" in line 12 should be --a--, and --of said post-- should be inserted after "end" in line 12; and,

regarding claim 10, --one of-- should be after "to" in line 7, and "structure" in line 7 should be --structures--.

### ***Claim Rejections - 35 USC § 103***

Claims 4 and 9-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Higdon, 5,375,363, in view of Moore et al., 5,716,161.

Regarding claim 4, Higdon discloses, in Figures 5, 6, and 10, a body **12**, an appendage **16**, and a connecting structure **354**. The body **12** has apertures **366** (Fig. 10), **A1** (see Figure 6 in the marked-up attachment provided in the last Office action). The appendage **16** corresponds to one of the apertures **366**. The appendage **16** includes at least one flexible connecting member **30**. The connecting member **30** comprises a coil spring. The connecting structure **354** comprises a post **A2** (see marked-up attachment; Figure 5) with prongs **364** (Fig. 10) flexibly coupled to the first end of the post. The prongs **364** extend toward the body **12**. One end of the flexible connecting member **30** is connected to the connecting structure **354** and another end of the connecting member **30** is connected to the appendage **16**. However, the prongs **364** do not extend away from the post and toward a second end of the post.

Moore et al. teach in Figure 5 prongs that extend away from a post 40 and toward a second end of the post 40 to manually install a connecting structure to apertures and quickly remove the connecting structure from the apertures without using tools (col. 1, lines 33-40). Therefore, as taught by Moore et al., it would have been obvious to one of ordinary skill in the art at the time the invention was made to replace the prongs of Higdon with the prongs of Moore et al. to manually install the connecting structure of Higdon to the apertures and quickly remove the connecting structure of Higdon from the apertures without using tools.

Regarding claim 9, the connecting member 30 has a spring constant that allows the appendage 16 to be freely movable with respect to the body responsive to wind.

Claims 5-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Higdon, 5,375,363, in view of Moore et al., 5,716,161, as applied to claims 4 and 9, and further in view of Wiser et al., 6,599,160.

Regarding claim 5, Higdon, as discussed, fails to disclose the one appendage comprising a wing structure. Weiser et al. teach an appendage comprising a wing structure to make a decoy as close to impart life-like movement to a bird. Therefore, as taught by Weiser et al., it would have been obvious to one of ordinary skill in the art at the time the invention was made to make the one appendage comprise a wing structure to make the goose of Higdon life-like.

Regarding claim 6, Higdon, as modified, discloses the connecting structure **354** includes a second end **56** to connect to the appendage **16**.

Regarding claim 7, Higdon, as modified, discloses the appendage **16** comprises an enclosure **48** configured to secure to the second end **56** of the connecting structure **354**.

Claims 10 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wiser et al., 6,599,160, and further in view of Higdon, 5,375,363.

Regarding claim 10, Wiser et al. disclose, in Figure 2, a kit comprising detached novelty portions **4,10,12**. The novelty portions comprise a body **4** and appendages **10,12**. The body **4** has apertures **16**. The appendages **10,12** include at least one flexible connecting member **14** comprising a coil spring extending therefrom. The appendages **10,12** are secured upon assembly. However, the kit fails to include connecting structures. Higdon teaches, in Figure 10, a kit having a connecting structure **354** to connect an appendage **316** to a body **312**, and the connecting structure comprising prongs **364** flexibly coupled to a first end of the connecting structure. However, Higdon fails to disclose more than one connecting structure. Applicant should not that the courts have held that mere duplication of the essential working parts of a device involves only routine skill in the art. Therefore, it would have been obvious to

one having ordinary skill in the art at the time the invention was made to include more than one connecting structure in the kit of Wiser et al. to connect the appendages to the body instead of extending the coil spring through the body (see Weiser et al.; col. 4, lines 7-16) . *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8. Given the duplication of the connecting structure, each of the connecting structures will comprise prongs flexibly coupled to the first end of each connecting structure.

Regarding claim 11, given the modification, the connecting structures will be inserted into the apertures instead of the coil springs extending through the body.

Claims 10 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Del Mas, 2,760,303, in view of Higdon, 5,375,363.

Regarding claim 10, Del Mas discloses, in Figure 3, a kit comprising detached novelty portions **10,36**. The novelty portions comprise a body **10** and appendages **61**. The body **10** has apertures **15**. The appendages **61** include at least one flexible connecting member **56** comprising a coil spring extending therefrom. The appendages **61** are securable upon assembly. The kit further includes connecting structures **16**. One end of the flexible connecting member **56** to one of the connecting structures **16**.

However, Del Mas fails to disclose the post comprising prongs flexibly coupled to a first end of the post, and the prongs extending towards the body to terminate at

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respective termini Higdon teaches, in Figure 10, a kit having a connecting structure **354**, and the connecting structure **354** comprising prongs **364** flexibly coupled to a first end of the connecting structure **354** to extend towards the body **312** to terminate at respective termini in order to connect an appendage **316** to a body **312** without using tools and to manually disconnect the appendage. Therefore, as taught by Higdon, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide each of the connecting structures with prongs flexibly coupled to a first end of one of the connecting structure to manually connect the appendages to the body without using tools.

Regarding claim 11, the connecting structures **16** are insertable into the apertures.

### ***Response to Arguments***

Applicants' arguments with respect to claims 4-7 and 9-11 have been considered but are moot in view of the new ground(s) of rejection.

With respect to Weiser et al., applicants have not disqualified the reference. The fact that the reference and the application have the same assignee is not, by itself, sufficient evidence to disqualify the prior art under 35 U.S.C. **103(c)**. There must be a statement that the common ownership was "at the time the invention was made."



### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. In particular, the new limitations "the plurality of prongs extending away from said post and toward said second end" recited in claim 4, lines 11-12, and "each said connecting structure comprising" recited in claim 10, lines 11-12, necessitated the new grounds of rejection. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ernesto Garcia whose telephone number is 571-272-

70837083. The examiner can normally be reached from 9:30-6:00. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel P. Stodola can be reached at 571-272-7087.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



E.G.

May 26, 2006



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